

CHAPTER 24

WETLANDS PROTECTION

Section 24-1.Purpose

The purpose of this ordinance is to protect the wetland, related water resources, and adjoining land areas in the City of Northampton by prior review and control of activities likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public water supply, private water supply, groundwater, fisheries, wildlife, wildlife habitat, recreation, agriculture, aesthetic values, flood control, erosion and sedimentation control, storm damage prevention, and prevention of water pollution; these values are to be known collectively as the "wetland values protected by this ordinance". This ordinance supplements the Wetlands Protection Act.

Section 24-2.Jurisdiction

Except as permitted by the Conservation Commission or as provided in this ordinance, no person shall remove, fill, dredge, build upon, or alter the following resource area:

- a. Any bordering vegetated wetland, freshwater wetland, riverine wetland, marsh, wet meadow, bog or swamp, or within one hundred (100) feet of said areas;
- b. Any bank or beach, or within one hundred (100) feet of said areas;
- c. Any lake, river, pond, or stream, whether intermittent or continuous, natural or manmade, or within one hundred (100) feet of said areas;
- d. Any land under aforesaid waters;
- e. Any land subject to flooding or inundation by ground-water, surface water, storm flowage, except artificially built detention areas and drainage channels including streets and gutters which would not otherwise be subject to jurisdiction under this ordinance or 310 CMR, or within forty (40) feet of said areas subject to flooding or inundation.
- f. Seasonal wetlands, isolated wetlands, including kettle holes, or within one hundred (100) feet of said areas.

Section 24-3.Exceptions

The Commission may exempt the one hundred (100) foot buffer area around a seasonal or isolated wetlands and/or the seasonal or isolated wetland resource area itself if the area of the wetland is less than four hundred (400) square feet and it does not appear likely that area is a vernal pond or otherwise critical to the wetland values protected by this ordinance. Seasonal wetlands and isolated wetlands which are less than 30 square feet are not within the jurisdiction of this ordinance, unless they contain a certified vernal pool, as defined under the Wetlands Protection Act, G. L. chapter 131, Section 40.

Notwithstanding the definition of alter (section 9, subsection f) the application and permit required by this ordinance shall not be required for catch basins, manholes, and dropped inlets that discharge into an existing pipe nor for maintaining, repairing, or replacing, but not changing or enlarging, an existing or lawfully located structure or facility used in the service

of the public to provide electric, gas, water, telephone, telegraph or other telecommunications services, sanitary sewers and storm sewers, provided that the structure or facility is not changed or enlarged, provided that written notice has been given to the Commission at least forty-eight (48) hours prior to commencement of work, and provided that the work conforms to performance standards in or cited by these ordinance.

The application and permit required by this ordinance shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work, provided that the Commission or its agent certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency, and provided that within twenty-one (21) days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this ordinance. If no member of the Commission or the Commission's agent can be reached before emergency work begins, the required notice must be given to the Commission within twenty-four (24) hours after commencement of the project. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Notwithstanding the definition of alter (section 9, subsection h) the application and permit required by this ordinance shall not be required for the harvesting of forestry products under the provisions of G.L. c. 132, Section 40-46 when an approved forest cutting plan has been properly filed with the Conservation Commission nor shall they be required for the normal maintenance or improvement of lands in agricultural use (as defined in 310 CMR 10.04), provided that the work conforms to performance standards in or cited by these ordinance.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act shall not apply under this ordinance.

Section 24-4. Requests For Determinations and Permit Applications

Any person desiring to know whether or not a proposed activity or an area is subject to this ordinance must request in writing a determination from the Commission. Such a request shall contain at least two (2) copies of all data, forms, and plans specified by the ordinance and the Commission and must include permission for the Commission and its agents to enter the property for the purpose of evaluating the request.

The Commission in an appropriate case may accept as the request under this ordinance the Request for Determination of Applicability filed under the Wetlands Protection Act, G. L. chapter 131, Section 40.

Written permit application shall be filed with the Commission to perform activities regulated by this ordinance affecting resource areas protected by this ordinance. The

application shall include at least two (2) copies of all plans, forms, and such information as are deemed necessary by the Commission to describe proposed activities and their effects on the environment and must include permission for the Commission and its agents to enter the property for the purpose of evaluating the request and monitoring the project. When applications include drainage calculations or the design of any facility that will be dedicated to the City of Northampton, one copy of the application shall be delivered to the City Engineer. **No activities shall commence without receiving and complying with a permit issued pursuant to this ordinance.**

The Commission in an appropriate case may accept as the application and plans under this ordinance the Notice of Intent and plans filed under the Wetlands Protection Act, G. L. c. 131, Section 40.

At the time of an application or request, the applicant shall pay a filing fee in addition to the fee paid under the Wetlands Protection Act and 310 CMR, unless the applicant is an public agency or board of the City of Northampton. Fees shall be placed in the Wetlands Fees Account established as required under state law to hold fees from the Wetlands Protection Act. The required permit fees are:

Request for Determination\$50.00 {+ \$35 advertising = \$85 total}

Permit Application (Notice of Intent).....\$70.00 {+ \$35 advertising = \$105 total}

plus, for any project for which a filing fee has not been paid under the Wetlands Protection Act and 310 CMR or the project has a value of less than \$2000:

For first building lot or housing unit in a resource area or buffer zone and other residential projects \$ 25.

For each additional building lot, housing unit or portion thereof in a resource area or buffer zone \$ 50.

For commercial, industrial, institutional projects\$100. plus \$0.10 square foot of disturbed area within a resource area plus \$0.02 square foot of disturbed area with a buffer zone.

Request for amended order.....\$50.00 {+ \$35 advertising = \$85 total}

Extensions of permits\$50.00

{In addition, any Notice of Intent or request for Certificate of Compliance must include a \$75 check made out to the Commonwealth of Massachusetts to cover the Registry of Deeds filing fee.}

In addition, the Commission is authorized to require the applicant to pay all the costs and expenses of any expert consultant deemed necessary by the Commission to review

the application or resource area.

Section 24-5. Public Notice and Hearings

An application or a request for determination shall be hand delivered or sent by certified mail, return receipt, to the Commission and shall, within 48 hours, give written notice to the owner if other than the applicant.

After the application/request is received, the applicant shall place a sign provided by the Conservation Commission facing a public right-of-way and visible from the right-of-way at the edge of the property upon which the permit or request is being made. Said sign shall notify the public that an application or request is pending on the property. Said sign shall be posted at least five (5) working days before the first public hearing on the application or request.

A signed statement of the person posting said sign stating that the required sign was provided shall be filed with the Commission prior to the public hearing.

The Commission shall conduct a public hearing on any application or request for determination. Notice of said hearing shall be published in a newspaper of general circulation in the City at least five (5) working days prior to said hearing. The published notice, which shall be prepared by the Commission, shall contain the following information: the date, time, and place of the hearing; the location of the property affected; the name of the applicant; and the action requested from the Commission. The Commission shall deliver the notice to the newspaper.

The Commission shall commence the public hearing within twenty-eight (28) days from receipt of a completed application or request for determination, unless the applicant extends the twenty-eight (28) day time period by a written waiver.

The Commission shall have authority to continue the hearing to a date certain announced at the hearing, or to an unspecified date, for reasons stated at the hearing, which may include the receipt of additional information offered by the applicant or others, or information and plans required of the applicant, deemed necessary by the Commission. In addition, when there is snow on the ground and/or the ground is frozen the Commission may continue a hearing until the snow melts and/or the ground thaws if it determines that accurate wetland delineation is not possible otherwise. If a date for continuation is not specified, the hearing shall reconvene within twenty-one (21) days after the submission of a specified piece of information or the occurrence of a specified action. If the date of said continued hearing is not announced at an earlier hearing, the new hearing date shall be published in a newspaper of general circulation in the City of Northampton five (5) working days prior to the continuation, at the expense of the applicant, and written notice shall be sent to any person who so requests in writing.

The Commission shall issue its permit, permit denial, or determination in writing within twenty-one (21) days of the close of the public hearing.

Section 24-6. Coordination With Other Boards

The Commission shall provide copies of its agenda to the Planning Department, City Engineer and Building Inspector. The Commission shall not take final action until five (5) working days after such officials have received their notice of the application. The Commission shall consider recommendations from those officials and any other city boards and officials but they shall not be binding on the Commission.

Section 24-7. Determinations, Permits and Conditions

The Commission shall have the authority, after a public hearing, to determine whether a specific parcel of land contains or does not contain resource areas protected under this ordinance. If the Commission finds that no such resource areas are present, it shall issue a negative determination.

If the Commission, after a public hearing on the permit application, determines that the activities which are the subject of the application are likely to have a significant or cumulative detrimental effect upon the wetland values protected by this ordinance, the Commission, within twenty-one (21) days of the close of the hearing, shall issue or deny a permit for the activities requested.

The Commission shall have the right to refuse to issue a permit if a previous permit on the same property or on contiguous properties under the same or affiliated ownership has not been complied with or has not received a Certificate of Compliance.

If it issues a permit (order of conditions), the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission can, at its discretion, require that construction of erosion control features and other features that protect the resource areas be completed before other work on the project proceeds. The Commission shall record the order of conditions in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property provided the applicant has provided adequate information on the ownership of the parcel. The applicant, however, and not the Commission is responsible for insuring that the Order is properly recorded and that future buyers are advised of permit conditions. In addition, the permittee or landowner shall notify the Commission when work is due to begin on the project not less than three (3) or more than fourteen (14) days before work begins on the project. If work is suspended on a project for more than sixty (60) days, the permittee or landowner shall again notify the Commission when work is due to begin. A copy of the permit (order of conditions) shall be on site at all times during construction activities related to the resource area or buffer zone.

The Commission is empowered to deny a permit for failure to meet the requirements, design specifications and performance standards of this ordinance; for failure to submit necessary information and plans requested by the Commission; for failure to avoid or prevent significant or cumulative detrimental effects upon the wetland values protected by this ordinance; and where no conditions are adequate to protect those values.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed for an additional period of up to three years, provided that a request for renewal is received in writing by the Commission prior to expiration and that financial guarantees and other securities required by the Commission are also renewed.

For good cause, the Commission may revoke or amend a permit issued under this ordinance after public notice and public hearing, and notice to the holder of the permit.

The Commission in an appropriate case may combine the permit or other action on an application issued under this ordinance with the Order of Conditions or other action issued or taken under the Wetlands Protection Act, G. L. chapter 131, Section 40.

After all work is done in accordance with a permit (order of conditions) issued under these ordinance, the landowner or the landowner's successors in interest shall apply for a certificate of compliance. This application shall be accompanied by an "as built" plan if different from the original plan and by the project engineers statement of the projects compliance with the permit, unless the requirement for the statement has been waived by the Commission.

When it has been adequately demonstrated to the Commission that the order of conditions was adhered to, the Commission shall issue a certificate of compliance. The order of conditions and the certificate of compliance may include conditions, such as maintenance requirements, that are perpetual and do not expire with the issuance of the certificate of compliance. The permittee or landowner shall record the certificate of compliance in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. (Ord. of 9-20-90)

Section 24-8. Forms and Submittal Requirements

After public notice and public hearing, the Commission shall promulgate required forms and submittal requirements to accomplish the purposes of this ordinance. The Commission may amend its required forms and submittal requirements after public notice and public hearing.

Failure by the Commission to promulgate such forms and submittal requirements or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this ordinance.

Section 24-9. Definitions

The following definitions shall apply in the interpretation of this ordinance:

Agent is any agent or Conservation Commission staff who is appointed agent by a majority vote of the Conservation Commission at a regularly scheduled meeting of the Commission.

Alter shall include, without limitations, the following activities when undertaken to, upon, within or affecting resource areas protected by this ordinance:

- a. Removal, excavation or dredging of soil, sand, gravel, clay, minerals, or aggregate materials of any kind.
- b. Changing of pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics.
- c. Drainage or other disturbance of water level or water table.
- d. Dumping, discharging or filling with any material which may degrade water quality.
- e. Placing of fill, or removal of material, which would alter elevation.
- f. Driving of piles, erection or repair of buildings, or structures of any kind.
- g. Placing of obstructions or objects in water.
- h. Destruction of plant life including cutting of trees.
- i. Changing water temperature, biochemical oxygen demand, or other physical, chemical or biological characteristics of surface and ground water.
- j. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

Buffer: The one hundred (100) foot boundary (forty feet for lands subject to flooding) around the resource area defined in Section 2.

Commission: The duly appointed Conservation Commission of the City of Northampton.

Freshwater wetlands: Riverine wetlands, marshes, wet meadows, bogs, or swamps that meet the following requirements: Fifty percent of the natural vegetative community must consist of obligate or facultative wetland plant species as included or identified in generally accepted scientific publications, including the Wetland Plant List--Northeast Region (U.S. Fish and Wildlife Service), and the soils must be annually saturated, as evidenced by the observed groundwater, soil gleying, or soil mottling, within 18 inches of the surface, or must be mapped by the Soil Conservation Service as a hydric soil or as having inclusions of hydric soils. If an applicant believes that a soil is not wet or hydric in spite of soil mottles, soil gleying, or soil mapping, the burden is on the applicant to prove the soil is not hydric. Wetlands may be defined on soil conditions alone, using the above criteria, if the natural vegetation has been disturbed and wetland identification cannot be made using vegetation.

Isolated Wetlands and Seasonal Wetlands: Freshwater wetlands that do not border on

creeks, rivers, streams, ponds, and lakes; isolated depressions which hold standing water for extended periods of time, such as kettle holes which are too small to be called ponds; and isolated depressions or closed basins which are subject to flooding during periods of high water table and high input from spring runoff or snow-melt or heavy precipitation, and support populations of non-transient macro-organisms (wetland plants defined in G.L. c. 131, Section 40 or 310 CMR 10.00 or animals visible to the naked eye) or serve as breeding habitat for select species of amphibians which depend on wetlands for breeding habitat. Isolated and seasonal wetlands include temporary ponds and pools and vernal ponds and pools.

Lands subject to flooding: Depressions or closed basins which serve as ponding areas for runoff, snow-melt, heavy precipitation, or high ground water which has risen above the ground surface, and areas which flood from a rise in a bordering waterway or water body.

Person: Shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivisions thereof to the extent subject to town ordinance, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents or assigns.

Resource Area: The primary resource being protected by this ordinance, which is the areas of jurisdiction defined in Section 2 excluding the one hundred (100) foot buffer (forty feet for lands subject to flooding).

Section 24-10. Performance Standards

- a. All work shall be subject to inspection and require the approval of the Conservation Commission.
- b. Artificial or Replacement Wetlands: All removal, filling, dredging, or altering of any wetland shall be mitigated by the creation of artificial or replacement wetlands, with the replacement wetland built at one hundred and fifteen (115) percent of the size of the area which was disturbed. If the applicant demonstrates to the Commission that the replacement wetland will provide wetland values equal or greater than the wetland values being lost, the Commission can allow replacement wetlands to be the same size as the disturbed area. The applicant must specify the source of all wetland plan and soil that will be used in creating additional wetlands.

Section 24-11. Performance Guarantees and Security

As part of a permit issued under this ordinance, except for permits issued for work being performed or contracted by any department or agency of the City of Northampton, and in addition to any security required by any other municipal or state board or agency, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- a. A financial guarantee, such as a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient

in the opinion of the Commission. Surety performance bonds, cash escrows, and standby letters of credit are the usual forms of financial guarantees that will be accepted. Property escrows will not be accepted. Permittees shall submit their estimates of what the required improvements will cost, preferably with contractors bids to perform the work

The term of any financial guarantees must be at least nine months longer than the time a permittee has to complete a project. The Commission, at its discretion, may allow partial or complete release of guaranteed funds as sections of a project are completed. The Commission has the right not to release part of the guaranteed funds until after the project is finished and a certificate of compliance is issued.

The Commission has the right to reject the terms of a proposed financial guarantee, including the financial institution holding guaranteed funds if it is not a local bank, and to determine the amount of funds that must be guaranteed. The Commission's only duty to secure release of guaranteed funds is to certify that required improvements or conditions have not been completed on time or to a satisfactory standard, as defined by the Commission.

At the discretion of the Commission, a joint financial guarantee may be used to comply with Commission requirements and that of other agencies, boards, and commissions in the City of Northampton, provided however that all relevant parties agree on the terms and the principal and that the guarantee is structured so that all relevant parties agree before any funds are released.

- b. A conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality and observed before any lot may be conveyed other than by mortgage deed.

Section 24-12. Enforcement

The Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this ordinance and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary. Any request for determination, application/notice of intent, or request for certificate of compliance is evidence of the landowners permission for said parties to enter private land and all forms shall include this as a condition.

The Commission shall have the responsibility, duty, and authority to enforce this ordinance, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

Upon request of the Commission, the City Solicitor shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police or other

appropriate official shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have the authority to assist the Commission in enforcement.

Any person who violates any provision of this ordinance, including any causing, suffering, or allowing of illegal work, any failure or refusal to comply with an enforcement order, violation notice or administrative order, and any failure or refusal to remove illegal fill, restore property, or obtain necessary Commission approval, or any person who violates the permits issued hereunder, shall be punished by a fine of not more than three hundred dollars (\$300.00). Each day, or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the ordinance or permit violated shall constitute a separate offense.

In the alternative to criminal prosecution, the Commission may utilize the non-criminal disposition procedure set forth in G. L. chapter 40, Section 21D, in accordance with City ordinance. Each day or portion thereof during which a violation continues shall constitute a separate offense and each provision of the ordinance or permit violated shall constitute a separate offense. This fine may be in addition to any levied under the Wetlands Protection Act, G. L. Chapter 131, Section 40.

Section 24-13. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have, in the opinion of the Conservation Commission, unacceptable significant or cumulative effect upon the wetland values protected by this ordinance. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

Section 24-14. Relation to the Wetlands Protection Act

This ordinance is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, G. L. c. 131, Sec. 40, and the regulations thereunder.

Unless otherwise stated in this ordinance, the definitions, procedures, and performance standards of the Wetlands Protection Act, G. L. c. 131, Sec. 40 and associated Regulations, 310 CMR 10.00, shall apply.

Section 24-15. Severability

The invalidity of any section or provision of this ordinance shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

Ordinance History

(Chapter 24--8/17/89)

(revisions to 24:4, 24:5, 24:6, 24:7--9/20/90)

CHAPTER 25

ENFORCEMENT

Section 25-1. Enforcement by Criminal Complaint

A violation of any ordinance of the City of Northampton, including zoning ordinances, may be enforced by a criminal complaint brought in the District Court. The penalty shall be that fixed by the specific ordinance violated; provided that, if no penalty is attached to a particular ordinance, the penalty shall be as set out in Section 1.8 of the Code of Ordinances.

Each day a violation continues shall be deemed a separate offense. (Ord. of 8-17-89)

Section 25-2. Enforcement by Civil Action

A violation of any ordinance of the City of Northampton, including zoning ordinances, may be enforced by a civil action filed in such court as is appropriate for the relief sought or as designated by statute. (Ord. of 8-17-89)

Section 25-3. Non Criminal Disposition of Ordinance Violations

Anyone who violates any ordinance of the City of Northampton, including zoning ordinances, which is subject to a specific penalty, or violates any rule or regulation of any municipal officer, board, or department which is subject to a specific penalty, may be penalized through a non-criminal disposition as authorized by Chapter 40, Section 21D, of the Massachusetts General Laws. Each day a violation continues shall be deemed a separate offense. (Ord. of 8-17-89)

Section 25-4. Non-Criminal Disposition: Notice of Violation; Contents; Procedure for Delivery

- a. The enforcing officer may give to a violator a written notice to appear before the Clerk/Magistrate of the Northampton District Court at any time during office hours, not later than twenty-one (21) days after the date of said notice. Any person so notified may appear and confess the offense charged, either personally or through a duly authorized agent or by mailing to said Clerk/Magistrate with the notice such specific sum of money as the City has fixed for violation of the ordinance. Payment of such sum shall operate as a final disposition of the case. (Ord. of 8-17-89)
- b. The notice of violation shall be in triplicate and shall contain the name and address, if known, of the violator, the specific offense charged, and the time and place for the required appearance. (Ord. of 8-17-89)

- c. The enforcing officer shall, if possible, deliver a copy of the notice to the violator at the time and place of the violation. If it is not possible to so deliver, said copy shall be mailed or delivered by an authorized agent of the City to the violator's last known address within fifteen (15) days after said violation. (Ord. of 8-17-89)
- d. At or before the completion of each tour of duty or at the beginning of the first subsequent tour of duty, the enforcing officer shall give to his commanding officer or department head those copies of each notice of violation issued which have not already been delivered or mailed. Said commanding officer or department head shall retain one copy and shall, at a time not later than the next court day after such delivery or mailing, deliver the other copy to the Clerk/Magistrate of the Northampton District Court. (Ord. of 8-17-89)

Section 25-5. Non Criminal Disposition: Enforcing Officer; Penalties

Sections 24-2 - 24-13

Enforcing Officer: Not less than two Conservation Commission Members

Fine: \$100.00 (Ord. of 9-21-89)